Supreme Court, U. S.
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No. 74-1599

In the Supreme Court of the United States

OCTOBER TERM, 1975

JEWELL D. CHANDLER, PETITIONER

v.

RICHARD L. ROUDEBUSH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The question presented by the petition is whether, under Section 717(c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. (Supp. III) 2000e-16(c), a federal employee who brings a civil action alleging unlawful employment discrimination is entitled to a plenary trial *de novo* in the district court rather than a review of the administrative record. The court of appeals in this case upheld the district court's refusal to conduct a trial *de novo* on petitioner's discrimination claims, because "[t]here was nothing before the district court to indicate that a useful purpose would be served by having a trial de novo" (Pet. App. 40a). The court of appeals held (*id.* at 41a):

> Where the administrative record affirmatively shows, as it did here, that the challenged personnel action was based upon nondiscriminatory reasons; and where, as here, the record on its face appears to be the product of a fair and impartial hearing; and where, as here, the appellant fails to point out a prejudicial defect in procedure or evidentiary deficits that should be remedied in court, the district court commits no error in deciding the case on the administrative record.

Although we believe that the judgment of the court of appeals is correct, we do not oppose the granting of the petition for a writ of certiorari. The Ninth Circuit's decision in this case conflicts with the Third Circuit's decision in *Sperling* v. *United States,* 515 F.2d 465 (reproduced at Pet. App. 42a-81a), which held that "the statutory language of the Act, as well as its legislative history, indicates a right to a trial *de novo* in the district court when suit is brought by an aggrieved federal employee pursuant to §717(c)" (*id.* at 74a).

Sperling also conflicts with the Tenth Circuit's decision in *Salone* v. *United States,* 511 F.2d 902 (reproduced at Pet. App. 82a-86a), pending on petition for a writ of certiorari, No. 74-1600. The court of appeals in *Salone* held that "the procedure [for handling federal employment discrimination complaints under Section 717(c)] should be consistent with those under 5 U.S.C. §701 et seq." and that "a de novo hearing is not here required" (Pet. App. 85a).

The conflict should be resolved by this Court. The *de novo* trial issue is of substantial practical importance to the administration of the 1972 amendments to Title VII. Its resolution will determine the proper role of the courts in the many federal employment discrimination suits brought under Section 717(c).[1]

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

AUGUST 1975.

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[1]The Civil Service Service Commission informs us that they have participated in the defense of over 200 federal employee Title VII cases in the district courts in fiscal year 1975 alone.